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October 8, 2014

Daniel Patrick Moynihan
United States Courthouse
500 Pearl St, Room 1030
New York, NY 10007-1312
Attn: Hon. John G. Koeltl

Schutte Bagclosures Inc. v. Kwik Lok Corporation (Case No. 12-civ-5541)

Your Honor:

As per the instruction of your clerk, Mr. Don Fletcher, I write regarding your Honor's recent Opinion and Order ("Opinion"), entered on September 30, 2014, in response to Plaintiff Schutte Bagclosures Inc.'s ("Schutte Inc.") Motion for Summary Judgment ("Schutte Motion") and Defendant Kwik Lok Corporation's ("Kwik Lok") Motion for Partial Summary Judgment ("Kwik Lok Motion"). Schutte Inc. plans to file a Motion for Reconsideration and Revision ("Reconsideration Motion") concerning this Opinion, which will be mainly about the assessment of facts and evidence in the record regarding the question of genericness of the '043 Product Configuration and the corresponding Beveled and Notched Square Unregistered Product Configuration.

Currently, as per your Honor's Opinion, Schutte Inc.'s Third Amended Complaint is due this Tuesday, October 14, 2014. However, because Schutte Inc. would also like to file a Reconsideration Motion, we respectfully seek the Court's permission to allow Schutte Inc. to file its Third Amended Complaint as so ordered, on October 14, 2014, while still reserving all rights to make its Reconsideration Motion thereafter. While we intend to make the Reconsideration Motion under Local Rule 6.3 and Federal Rule of Civil Procedure 59(e), in light of the time constraints, the necessity for preparation, and the compulsory revision of our Second Amended Complaint, we ask the Court to grant us the 28 days permitted under federal law.¹ Thus, Schutte Inc. would file its Third Amended Complaint on October 14, 2014, and then proceed to file its Reconsideration Motion on October 28, 2014.

In the alternative, if the Court would require the Reconsideration Motion to be filed before the Third Amended Complaint, we would respectfully request the Court to allow Schutte

¹ Under Rule 59(e), and as reiterated in your Honor's recent decision in *Smith v. City of New York*, No. 12 Civ. 8131, the applicable time period for a reconsideration motion runs 28 days from the day judgment is entered. Rule 59(e) is also applicable to decisions for partial summary judgment. *See Crown Castle USA Inc. v. Fred A Nudd Corp.*, No. 05-CV-6163T., 2008 BL 170073 (W.D.N.Y. Aug. 13, 2008).

Inc. to file its Consideration Motion on or before October 28, 2014, and the Third Amended Complaint thereafter, within a term to be determined by the Court.

We appreciate the Court's opinion on these issues. Should the Court wish to further discuss these issues, we are, of course, available for a conference.

Cordially,

A handwritten signature in blue ink, appearing to read 'Carl M.R. van der Zandt', with a long horizontal stroke extending to the right.

Carl M.R. van der Zandt